

No. 24-2355

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

PAYSERVICES BANK,

Plaintiff-Appellant,

V.

FEDERAL RESERVE BANK OF SAN FRANCISCO,

Defendant-Appellee.

On Appeal from the United States District Court for
the District of Idaho
No. 1:23-cv-00305-REP
Hon. Raymond E. Patricco, Jr.

**APPELLEE'S FURTHER
SUPPLEMENTAL EXCERPTS OF RECORD**
Volume 1 of 1

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INDEX

Cease-and-Desist Order, dated October 18, 2024.....	3
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**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO**

In the Matter of:

PAYSERVICES, INC. AND PAYSERVICES
BANK

Respondents.

Docket No. 2024-41-02

ORDER TO CEASE AND DESIST

The Director of the Idaho Department of Finance (“Department”), being authorized to administer and enforce the Idaho Bank Act, Idaho Code § 26-101 *et seq.* (the “Act”), has determined based on the following Findings of Fact and Conclusions of Law, that it is in the public interest to order PayServices, Inc. and PayServices Bank (collectively, “PayServices”) to immediately **CEASE AND DESIST** from acts, practices, or omissions that violate the Act.

FINDINGS OF FACT

1. On April 8, 2022, PayServices applied to the Department for a bank charter.
2. On August 3, 2022, PayServices received preliminary, conditional approval to engage in the business of banking from the Department.
3. On September 12, 2022, the Department granted a waiver to PayServices to use the

word “bank” in its name in the state of Idaho.

4. On May 4, 2023, the Department notified PayServices that if it was unable to satisfy all conditional approval requirements from the preliminary approval letter by August 3, 2023, that the preliminary approval would expire. The Department also notified PayServices that if the conditions were not met by that date, it could submit a new application for a bank charter.

5. On August 4, 2023, The Department notified PayServices that it had not met the conditions to receive a bank charter. The Department notified PayServices that if it was continuing to seek a bank charter, that it was required to resubmit an updated application by August 25, 2023.

6. PayServices timely provided the requested updated application documents.

7. On October 16, 2023, the Department granted a one-time extension of the preliminary charter approval to October 15, 2024. The Department notified PayServices that if the conditions outlined in the August 3, 2022, letter were not met by October 15, 2024, and if PayServices still sought a charter from the Department, it would have to submit a new application.

8. PayServices failed to meet the conditions outlined in the August 3, 2022, letter.

9. On October 16, 2024, the Department notified PayServices that the preliminary approval had expired and was now terminated. The Department also notified PayServices that it could submit a new application if it was still interested in seeking an Idaho bank charter.

10. On October 16, 2024, the Department rescinded its September 12, 2022, waiver allowing PayServices to use the word “bank” in its name. The Department notified PayServices that “no person may advertise or transact business in this state under a name or title that contains the word ‘bank,’ ‘banker,’ ‘bancorp,’ ‘saving bank,’ ‘trust company,’ or a word or words of similar import, unless the person has been granted a charter to engage in banking or trust business in this state by the director, or unless the director has granted the person a waiver from this prohibition .

...” Idaho Code § 26-1202. The Department further notified PayServices that it must refrain from using “PayServices Bank” and “bank” in any transactions, written communications, and advertisements.

11. On October 16, 2024, Lionel Danenberg, an executive of PayServices, corresponded with the Department and stated that PayServices Bank rejected the Department’s recission and refused to stop using “PayServices Bank” and “bank.”

CONCLUSIONS OF LAW

AUTHORITY OF THE DEPARTMENT

12. The Department has a duty to administer and enforce the Act.

13. Idaho Code § 26-1115 provides as follows, in pertinent part:

If the director of the department of finance finds that . . . any person has violated or is about to violate any provision of this [Idaho Bank Act], any rule or order issued under the act, any condition imposed in writing by the director, or any written agreement entered into with the director, the director may order the . . . person to cease and desist from any such violation or practice. The order shall be issued pursuant to chapter 52, title 67, Idaho Code.

PAYSERVICES’ CONTINUED USE OF THE WORD BANK VIOLATES THE ACT

14. PayServices is violating Idaho Code § 26-1202 by refusing to refrain from using the name “PayServices Bank” or the word “bank.”

15. Idaho Code § 26-1202 provides as follows, in pertinent part:

. . . [N]o person may advertise or transact business in this state under a name or title that contains the word “bank,” “banker,” “bancorp,” “savings bank,” “trust company,” or a word or words of similar import, unless the person has been granted a charter to engage in banking or trust business in this state by the director, or unless the director has granted the person a waiver from this prohibition as set forth in this section.

16. As of October 16, 2024, PayServices is not a chartered bank and does not have a waiver from the Director permitting it to use the word “bank” in its name.

17. Therefore, PayServices refusal to refrain from using the word “bank” and its ongoing use of the word bank in its name is a violation of Idaho Code § 26-1202.

ORDER

The Director, having reviewed the foregoing, good cause being shown, and the public interest being served thereby,

NOW, THEREFORE, the Director HEREBY FINDS that PayServices has violated the Idaho Bank Act as set forth above.

Pursuant to Idaho Code §§ 26-1115 & 1202, PAYSERVICES IS HEREBY ORDERED that it and its agents and employees immediately CEASE AND DESIST from acts, practices, or omissions which constitute a violation of the Act. PayServices may not advertise or transact business in Idaho under a name or title that contains the word “bank,” “banker,” “bancorp,” “savings bank,” “trust company,” or a word or words of similar import.

This ORDER TO CEASE AND DESIST is effective upon issuance.

IT IS SO ORDERED.

DATED this 18th day of October 2024.



STATE OF IDAHO
DEPARTMENT OF FINANCE



PATRICIA R. PERKINS, Director

NOTICE

Pursuant to the Idaho Administrative Procedure Act, Idaho Code § 67-5201 *et seq.*, Respondent may appeal from this order within twenty-eight (28) days of the service date of this order. An appeal is filed when it is received by the Department or postmarked within the time limits provided in this Notice. Any such appeal must be in writing and sent via mail OR via email to:

Salvador Cruz
Financial Institutions Bureau Chief
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031
salvador.cruz@finance.idaho.gov

An appeal may also be served on the Department's counsel, Nathan H. Nielson, Deputy Attorney General, at nathan.nielson@ag.idaho.gov.

If the Applicant timely appeals this action, the Department will assign the contested case proceeding to the Office of Administrative Hearings pursuant to Idaho Code § 67-5280(2)(a). Proceedings will be conducted in accordance with the Idaho Administrative Procedure Act, Idaho Code § 67-5201 *et seq.* and the Idaho Rules of Administrative Procedure (IDAPA 62.01.01).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of October, 2024, I caused a true and correct copy of the foregoing fully executed ORDER TO CEASE AND DESIST to be served on the following by the designated means:

Lionel Danenberg
PayServices
2234 North Federal Highway, #3035
Boca Raton, FL 33431

☒ U.S. Mail, Postage Paid
☒ Certified mail
☐ Facsimile
☒ Email: lionel@payservices.com



Ailen Evaniuck
Paralegal